IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 182 of 2000

Reserved on : 13.7.2007

Date of Decision : July 20th, 2007

State of H. P. …Appellant.

Versus:

Parkash Chand …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant : Mr. C. B. Singh, Deputy Advocate General.

For the respondent. Mr. D. N. Ronta, Advocate.

Sanjay Karol, J.

This appeal is directed against the judgment and decree dated 31.7.1999 passed by the learned Addl. District Judge, Shimla, whereby a decree for a sum of Rs.2,81,845/- along with interest @ 6% per annum till realization of the entire decretal amount, has been passed.

For the purpose of convenience, the parties hereinafter are referred to as the 'plaintiff/respondent' and the 'defendant/appellant'.

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Plaintiff filed a suit for recovery of a sum of Rs.2,70,564.43 against the defendant along with pendente lite and future interest, inter alia, contending that the plaintiff is owner in possession of land bearing Khasra No. 1288, measuring 23-18 bighas situate in Chak Purag, Tehsil Kotkhai, District Shimla. In August, 1988, the officials and labour of the defendant, HPPWD Sub Division, Kotkhai, threw debris, stones and boulders from the Purag link road, which is situated above the plaintiff's land. Since the debris was thrown by using the bulldozer, it resultantly damaged the plants and rendered 4-7 bighas of land completely unfit for cultivation. The defendant got the damage report prepared through revenue officials/ agency. The damage to the fruit plants was, duly entered in MB No.JD/1520 (pages 59 to 62) by the concerned Junior Engineer and the damage assessed. The damage report for land assessed Rs.2,000/- as compensation payable. Damage to the fruit trees was got assessed through the Horticulture Department of the defendant and the assessment done on the basis of 'Harbans Singh Formula, 1966' (based on the price prevalent for the year 1966), was assessed to be of Rs. 31,354/-. According to the plaintiff, since there has been increase of 402 percent in the price index between the year 1966 till 1988 as per the Consumer Price Index, accordingly the damage caused to the fruit trees ought to have been assessed at Rs.1,26,043.08 paise (Rs.31,354 x 402%) and the cost of removal of debris, stones

and boulders to the tune of Rs.12,000/- along with interest on both the aforesaid amounts.

In the written statement filed by the defendant, various preliminary objections on the maintainability of the suit has been raised and on merits, while admitting that the plaintiff is owner in possession of the land in question and also that the debris including stones and boulders had fallen on the land of the plaintiff from the Purag Link Road, it is clarified that the debris was stacked on the edge of the road and due to unprecedented rain in the month of August, 1988, the same rolled down damaging the land as well as the fruit trees of the plaintiff. The Department had taken adequate precautionary measures to avoid the damage but 56 apple, 29 almond and 4 apricot plants of different ages, were damaged. The fact that the damage was assessed on the basis of Harbans Singh Formula, is admitted, however, with regard to the applicability of the Price Index for the year 1966, it is submitted that the same is not applicable as the debris had rolled down due to heavy rains and that it does not cover Horticulture Industry.

From the pleadings of the parties, the court below framed the following issues and returned the findings:

"1. Whether the defendant caused damage to the land and fruit plants of plaintiff as alleged?
…OPP.

2. If issue No.1 is held in affirmative, to what amount of compensation the petitioner/plaintiff is entitled by way of damage?
…OPP.

3. Whether the plaintiff is entitled to interest, if so, at what rate?. …….OPP

4. Whether the suit is not maintainable in the present form, as alleged?. …OPD.

5. Whether the suit is bad for non-joinder of necessary parties. …OPD.

6. Relief.”

Issues No.1, 2, 3 & 6 were decided in the affirmative and issues No. 4 & 5 were decided in the negative.

I have heard the learned counsel for the parties.

Plaintiff has examined five witnesses and defendant has examined one witness. During the trial, 16 documents were produced and exhibited, namely; Ext.PW-1/A Legal Notice, Ext.PW-1/B postal receipt and Ext.PW-1/C are acknowledgement thereof, Ext.PW-1/D copy of claim and damage report of trees, Ext.PW-1/E report of Patwari, Ext.PW-1/F damage report of Executive Engineer, Exts. PW-1/G, PW-1/H, PW-1/J, PW-1/K & PW-1/L Revenue record i.e. jamabandies showing ownership, Ext.PW-4/A consumer price index issued by the Labour Bureau, Shimla, Ext.PW-3/A assessment report of damage carried out by the Horticulture Department, Ext.D/1 copy of document Ext.PW-1/D showing deposit of Rs.31,354/- in the office of the Tehsildar, Ext.D/2, copy of letter of Executive Engineer to Tehsildar regarding sending a draft amounting to Rs.31,354/- and Ext.D/3

refusal by the plaintiff not to accept compensation towards debris.

On Issues No. 4 & 5, the Court below has held that the suit is maintainable and the claim can be adjudicated in accordance with law. At the time of hearing, learned counsel for the appellant has not disputed this part of the findings of the trial Court. Therefore, in my view, the following point needs to be determined:-

1. Whether the plaintiff is entitled to the amount of damages along with the interest as claimed for in the plaint, if so its effect?.

From the statement of PW-1 as also the Exts. PW-1/G to PW-1/L, it can be safely concluded that the plaintiff is owner in possession of the land in question. From Exts.PW-1/F, Ext.PW-3/A, Ext.D/1 & Ext.D/2, it can also be safely held that plaintiff's land and plants have been damaged due to rolling down of the debris.

It is an admitted fact that the defendant was constructing the road immediately above the land of the plaintiff and the debris including boulders and stones were stored on the edge of the road at different places and that it had fallen/ rolled down and the plaintiff's plants and land were damaged. Whether there has been negligence or not is a different question. Shri Paresh Chauhan (PW-5), concerned Junior Engineer posted in the defendant's Public Works Department, Kotkhai, has stated

on oath that the damage was recorded in MB No. JD/1520 (pages 59 to 62) and damage report Ext.PW-1/D and Ext.D/1 was got prepared through various Government Agencies and money was also offered in terms thereof to the plaintiff. From the damage report, it is evident that out of 23-18-0 bighas of land, 6-18-0 bighas of land was damaged due to the falling of the debris. While exhibiting PW-1/D, he has categorically admitted that the damage occurred due to the falling of the debris while the road was being cleared by the Bulldozer. Shri Chet Ram (PW-2) and plaintiff (PW-1) have categorically stated on oath that the debris, stones and boulders fell in the orchard of the plaintiff while clearing the road with the Bulldozer. From the statement of Shri Raj Kumar Verma, Assistant Engineer, HPPWD (DW-1), it can be stated that the plea taken by the defendant that the debris had fallen down due to unprecedented rains, cannot be sufficiently proved. He has admitted that the report Ext.D/1 was got prepared and loss caused to the plaintiff on account of damage to the fruit bearing trees was also got assessed from the Department of Horticulture, was deposited in the office of the Tehsildar, Kotkhai on 7.12.1998 as per letter Ex.D/2. According to him, the cost of the removal of the debris was assessed at Rs.2000/-, which was offered to the plaintiff who refused as is evident from letter Ext.D/3. He, however, has admitted that there is no record showing that the debris stacked

at the end of the road, had turned into slush due to heavy rains and had thus fallen down on to the land of the plaintiff.

Shri Mange Ram (PW-3), Horticulture Development Officer, Kotkhai, District Shimla, has stated on oath that the claim with regard to the compensation in respect of 56 apple, 29 almond and 4 apricot trees, was got assessed at Rs.31,354/- in terms of the assessment report Ext.PW-3/A. He has stated that the same was prepared on the basis of the Harbans Singh Formula, 1966 (Ext PW-4/A). Shri A. K. Girish, Field Officer in the office of the Labour Bureau, Shimla (PW-4) has specifically stated on oath that the aforesaid Formula is still applicable and is based on the prices as prevalent in the year 1966.

The fact that the damage has been caused to the fruit plants of the plaintiffs is not disputed and the defendant also got the damage report prepared. In my view, therefore, the controversy is narrow down as to whether the plaintiff is entitled to enhanced amount of compensation as claimed in the appeal or not.

The fact that the loss and damage has been assessed on the basis of 'Harbans Singh Formula' is an admitted case of the parties. Nothing has come on record to support the contentions of the defendant that the compensation awarded and paid to the plaintiff is without any entitlement. There is neither any statement nor any document on record to even suggest the same except the pleadings, but there is no evidence

in support of the same. If the damage caused was not attributable to the defendant, then what was the necessity of getting the assessment of compensation and valuation of the fruit trees done and offering the amount of compensation to the plaintiff.

This Court in Civil Suit No.98/1988 titled as ***Vijyoti Devi*** Vs. ***State of H.P***, in some what similar circumstances, has acknowledged the applicability of the Consumer Price Index as maintained by the Labour Bureau, Shimla for assessing the damage to the fruit bearing trees carried out by the defendant in accordance with the 'Harbans Singh Formula' This Court has noticed that the 'Harbans Singh Formula' stands duly approved by the Director of Agriculture, Punjab and Himachal Pradesh. for the purpose of assessment of market value of the fruit trees.

This Court in ***Union of India and others Vs. Khazana Ram and others*** 1998 (1) Sim.L.C. 479 has further held as under:

> "Since both the parties are not disputing that the basis for determining the compensation is Harbans Singh Formula, the controversy is narrowed down that how much increase should be allowed over the assessment of compensation made by the Department (Annexure PB to the writ petition and Ext.RW-1/A on the file of the District Judge) keeping in view the rise in prices from the year when the said formula was prepared and adopted. This formula is contained in Article 'The Evaluation of Fruit Trees, Basic Principles and Method' written by Shri Harbans

> Singh, the then Director of Horticulture, Himachal Pradesh, which was duly approved by the Directors of Agriculture, Punjab and Himachal Pradesh for the purpose of assessment of market value of fruit trees. In judgment dated 9.7.1997 passed in Civil Suit No.98 of 1998 titled Smt. Vijoti Devi (since deceased) through her legal representative Raj Pal Chauhan V. The State of Himachal Pradesh, the learned Single Judge of this Court has accepted this formula for determining the market value of the fruit trees. In the said judgment, it has been taken note of that this formula was published in the year 1966 since when there has been substantial increased in the Price Index 331% or three-fold increase has been given for assessing the market value of fruit trees in the year 1986. Similarly, in Ranjit Singh V. The Union Territory, Chandigarh, 1983 Revenue Law Reporter (P&H) 451 the Harbans Singh formula was applied for determining the market value of the fruit trees and premium was given for increase in Price Index from the year 1966 till the year of assessment of compensation."

The defendant accepted the loss of the plaintiff being genuine, therefore, got the damage assessed and evaluated. No explanation, whatsoever, is on record to suggest as to why the matter with regard to assessment of damage to the plants was referred to the Horticulture Department. If no damage was caused due to the negligence of the defendant, then why was the matter referred to the same. From the record, it can safely be inferred that the plaintiff suffered due to various acts of

omission and commission on the part of the officials of the defendant. This Court in *Vijyoti's* case (supra) has further held as under:

> "It has come in the evidence of PW 5 that the assessment of damage was done on the basis of Harbans formula. This formula is contained in a publication by S. Harbans Singh, formerly Director of Horticulture, Himachal Pradesh dealing with basic principles and methods of evaluation of fruit trees. This publication was published in the year 1966.
>
> It deserves to be noticed that this Harbans Singh Formula stands duly approved by the Directors of Agriculture, Punjab and Himachal Pradesh for the purpose of assessment of market value of the fruit trees (See: Ranjit Singh V. The Union Territory, Chandigarh (1983 Rev.L.R.451).
>
> The learned counsel for the plaintiff has contended that this formula was published and based on the market conditions as prevalent in the year 1966 and, as such, the plaintiff is entitled to claim a substantial increase in the price of the fruit trees during the period 1966 to 1986-87. It was pointed out that as per consumer price index in respect of Himachal Pradesh prepared by the Government of India, (Ministry of Labour), Labour Bureau, Shimla, Ex. P11, the price index in the year 1966 was 111 and the same had risen to 478 in the year 1986. In other words, there has been an increase of 331%. Putting it roughly, there has been three fold increase in the price index. The learned counsel for the plaintiff has, therefore, contended that considering such three fold increase in the price index, the damage assessed vide Ext. PW 5/A to PW 5/C is also

required to be increased accordingly. Calculating on such basis, the plaintiff would be entitled to damages as under:

(a) In respect of plants in the land
Detailed at serial Nos.(1) and (2) above,
Rs.11,368.24 paise x 3 Rs.34,104.72 .

(b) In respect of plants in the land
Detailed at serial Nos. (3) and (4) above
Rs.1,29,587.50 paise x 3 Rs.3 ,88,762.50

Rs.4,22,867.22 p

The learned Assistant Advocate General appearing for the defendant, has not been able to challenge the correctness of the price index as reflected in Ext.P11 and the increase in such price index during the period 1966 to 1986 from 111 to 478, that is, an increase of 331%. In fact PW 2, Supervising Officer, Labour Bureau, Shimla, who proved Ext. P11 in evidence, was never cross examined by the defendant in order to show that the price index indicated in Ex. P11 was not correct. It was, however, contended that the price index reflected by Ex.P11. could no be taken note of for assessing and determining the increase in the price during the period 1966 to 1986 since it is difficult to determine the increase during the period with precision.

In Ranjit Singh V. The Union Territory, Chandigarh (supra), the High Court of Punjab and Haryana while determining the market value of the fruit trees under the provisions of Land Acquisition Act, 1894 by placing reliance on the whole sale price index published by Economic Advisor, Ministry of

> Industry and Civil Supplies, Government of India, allowed the increase in the price of fruit trees for the period 1966 to 1975 over the assessment of market value made on the basis of Harbans Singh Formula.
>
> Similar increase was allowed by the High Court of Punjab and Haryana Gokal Chand alias Gokal Singh and another V. State of Punjab (1989 (3) LACC 487)."

The assessment of the damage to the plants has been carried out on the basis of the Formula, which alone is the basis and has not been revised since 1966. Relying upon on the material on record as also the ratio of law laid down by this Court, I am of the opinion that the plaintiff is entitled to the increased amount of damages in terms of damage report of the Price Index. Therefore, in my view, the plaintiff would be entitled to Rs.31,354/- X 402% = Rs.1,26,043.08 paise (say Rs.1,26,043/-). In addition thereto the plaintiff is also entitled to damage caused to the land at Rs.2,000/- as has been held by the Court below also. Thus, the total amount of compensation to which the plaintiff is entitled is Rs.1,28,043/-.

With regard to the interest, learned counsel for the appellant has argued that since it has already come on record that the defendant had offered a sum of Rs.31,354/- plus 2,000/- to the plaintiff which was refused and was consequently deposited with the Tehsildar, Kotkhai on 7.12.1998, therefore, no interest should have been awarded on this amount. The submission is supported by Exts.D2 & D3. The said amount

could have been accepted by the plaintiff even under protest, which was not done so. In my view, this submission of the appellant needs to be accepted. Therefore, no interest can be awarded to the plaintiff on a sum of Rs.31,354/- + Rs.2,000/- = Rs.33,354/- and the plaintiff would be entitled to interest only on Rs.1,28,043/- minus Rs.33,354/- = Rs.94,689/-, at the rate awarded by the Court below. The Court below has awarded interest @ 6% from the date of institution of the suit i.e. 31.12.1996 till the realization of the amount. Consequently, I see no reason as to why the same should not be awarded to the plaintiff.

For all the aforesaid reasons, I am of the view that there is no illegality or infirmity/perversity in the impugned judgment and decree, except referred to hereinabove. Consequently, the appeal is partly allowed and the decree is directed to be modified in terms of the aforesaid observations.

(Sanjay Karol),
Judge.

July 20th, 2007.
(rana)